

## **Amendment to the Council's adopted Community Infrastructure Levy Regulation 123 List footnote**

### **Summary**

The Council's Community Infrastructure Levy (CIL) came into effect in December 2014. The accompanying Regulation 123 list set out the types of Infrastructure which will be funded or part funded through CIL, this includes shared Suitable Alternative Natural Greenspace (SANG).

Officers are seeking an amendment to the footnote to the Regulation 123 List to clarify the approach to CIL exempt residential uses so that these types of developments can discharge their requirement under the Habitats Regulations.

Payment for management and maintenance of SANG can be collected outside of CIL by use of a Unilateral Undertaking as it does not fall within the definition of infrastructure.

### **Portfolio Regulatory**

**Date Portfolio Holder signed off report June 13<sup>th</sup> 2016**

### **Wards Affected**

All

### **Recommendation**

The Executive is advised to RESOLVE:

- (i) That an amendment is made to the Regulation 123 List footnote to ensure CIL exempt residential development can meet the requirements of the Conservation of Habitats and Species Regulations 2010 by contributing to the management and maintenance of SANG.

### **Resource Implications**

- 1.1 There are potential resource implications if the Management and Maintenance payment for SANGS cannot be collected from CIL exempt development. If proposals for residential development under Permitted Development are unable to satisfy the Habitats Regulations this could also have an impact on the Council's ability to seek New Homes Bonus.

### **2. Key Issues**

- 2.1 All development within the Borough, which provides additional residential units, has to provide or contribute to avoidance measures to mitigate the impact of such development on the Thames Basin Heaths SPA. This is to ensure that requirements of the Habitats Regulations 2010 for such development can be met. The avoidance measure is through the provision or contribution to SANG, including the management and maintenance of SANG in perpetuity, which, for the purpose of the funding calculation only, is deemed to be at least 80 years.

- 2.2 The provision of SANG, by virtue of the inclusion of the element of the land acquisition cost, is considered to be infrastructure and as such it is included in the Council's Regulation 123 List.
- 2.3 The Executive in July 2015 resolved that an interim SANGs charge of £112.50 (Gross Internal Area) be levied to cover the maintenance and management cost of SANGS from CIL exempt residential development and that an additional footnote be added to the Regulation 123 List, to ensure that residential development could meet the requirements of the Conservation of Habitats and Species Regulations 2010 by contributing to the management and maintenance of SANGs.
- 2.4 The Housing and Planning Act 2016 requires the delivery of starter homes, which will be CIL exempt. In addition the changes to the General Permitted Development Order 2015 makes the change of use of empty B1 offices to residential permanent, previously it had been expected to end in 2016. The Council will not be able to seek contributions to SANG through CIL from these types of development. In addition there are other types of development for change of use to residential that are also CIL exempt but will still need to meet the Habitats Regulation Requirements. These are:

- Applications where less than 100 sq. m of net residential floorspace is created;
- Any conversions to residential where no additional floorspace is created, including:
  - Retail/hotel/agricultural conversions to residential;
  - Office to residential through planning permission where the applicant can demonstrate that the building or part of the building has been in office use for a 6 month period within the last 3 years
  - Regulation 73 applications for conversions to Houses of Multiple Occupancy;
- Applications for sub-division of 1 dwelling in to 2 or more separate dwellings;
- Self / custom build

NB Partial losses of SANG monies can occur where only part of an application is CIL liable.

- 2.5 The extent of the exemption is such that there is now a risk that the Council will be unable to collect sufficient funds for the management and maintenance of SANGs in the Borough in perpetuity. The Council, as the Competent Authority, would have to conclude that such development could not meet the Habitats Regulations Assessment thus preventing the delivery of new homes to meet the Borough's Housing need and in particular lower cost homes that would benefit first time buyers.

- 2.6 In order for this change of use to be able to meet the requirements of the Habitats Regulations 2010, it is recommended that the Council amend the footnote of the Regulation 123 List to include the uses listed above. The Regulation 123 list with the additional amendment is appended at Annex 1.

### **3. Options**

- 3.1 The Options are as follows:

- (i) That an amendment be made to the footnote of the Regulation 123 List to explain the interim charge and ensure that residential development provided can meet the requirements of the Conservation of Habitats and Species Regulations 2010 by contributing to the management and maintenance of SANG;
- (ii) That the above option is not agreed.

### **4. Proposals**

- 4.1 It is proposed that an amendment is made to the footnote of the Regulation 123 list to include those uses set out in Paragraph 2.4 of this report so that an interim charge for the management and maintenance of SANG can be applied.

### **5. Supporting Information**

- 5.1 A copy of the Regulation 123 List with the proposed amendment is appended to this Report.

### **6. Corporate Objectives And Key Priorities**

- 6.1 Underpins Objective 1 to make Surrey Heath an even better place where people are happy to live.
- 6.2 Underpins Objective 2 to sustain and promote the local economy so that our people can work and do business across Surrey Heath by promoting improvements to local transport and infrastructure.

### **7. Policy Framework**

- 7.1 The ability to set a CIL charge is set out in the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended). A CIL Charging Schedule sits alongside the Local Plan, although it does not form part of the statutory development plan.

<b>Annexes</b>	Annex 1 - CIL Charging Schedule Regulation 123 List
<b>Background Papers</b>	Nil
<b>Author/Contact Details</b>	Jane Ireland- Planning Policy Manager <a href="mailto:jane.ireland@surreyheath.gov.uk">jane.ireland@surreyheath.gov.uk</a>
<b>Head of Service</b>	Jenny Rickard – Executive Head of Regulatory

### Consultations, Implications and Issues Addressed

<b>Resources</b>	<b>Required</b>	<b>Consulted</b>
Revenue	✓	2 <sup>nd</sup> June 2016
Capital	✓	2 <sup>nd</sup> June 2016
Human Resources		
Asset Management	✓	2 <sup>nd</sup> June 2016
IT		
<b>Other Issues</b>	<b>Required</b>	<b>Consulted</b>
Corporate Objectives & Key Priorities	✓	2 <sup>nd</sup> June 2016
Policy Framework		
Legal	✓	2 <sup>nd</sup> June 2016
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing		

**Review Date:**

**Version:** 1